



# MINUTES

## **FORT MYERS BEACH TOWN COUNCIL TOWN HALL – COUNCIL CHAMBERS**

2523 ESTERO BOULEVARD  
FORT MYERS BEACH, FLORIDA 33931

**Tuesday February 22, 2011**

**6:30 PM**

### **I. CALL TO ORDER**

Mayor Kiker called the meeting to order at 6:35 p.m. Present with Mayor Kiker Was Vice Mayor Raymond, Council members Babcock, List and Mandel, Town Manager Stewart, Town Attorney Miller and Town Clerk Mayher.

### **II. INVOCATION – Vince Cummings**

### **III. PLEDGE OF ALLEGIANCE –** Pledge led by youth council.

### **IV. YOUTH COUNCIL – Fort Myers Beach Elementary School** Two students from beach elementary, Sam Ifrah. and Mara Benton provided a synopsis of events and recent visitors to the school from the past month.

### **V. APPROVAL OF FINAL AGENDA**

Council concurred to move the Bay Oaks Foundation Plaque presentation and the Special Event Application – Beach Bash prior to Public Comment.

#### **A. Bay Oaks Foundation Plaque Presentation**

Mayor Kiker presented a silver sponsor plaque to Bruce Cermak who presented to Bay Oaks \$3,260.60 which was raised at the Putt Putt Pub Crawl.

#### **C. Special Event Application – Beach Bash**

Town Manager Stewart indicated this application for a special event was before Council since it would be longer than 3 days, would serve alcohol, and would fall in the height of season.

#### **Public Comment Opened**

▪ **Jason Kamp** President of Big C Events stated that the festival would run from Thursday through Sunday, that they had acquired parking at Lover's Key and would be running 8 shuttles to and from Lover's Key and Holiday Inn. Additional parking is arranged at Rt. 41 and Bonita Beach Road.

▪ **Bill Knight**, Owner of "Sand Lovers" was a professional sand sculptor who had put on an event on Siesta Key which shared similar traffic issues and the event went off quite well, bringing in over a million dollars to the community.

▪ **John Albion** President FMB Chamber of Commerce addressed Council to make sure they understood this was not the November sandsculpting event that the FMB Chamber holds each year.

### **Public Comment Closed**

**MOTION:** Council Member Mandel made a motion to approve the "Beach Bash" special event; -second by Council Member List.

Vice Mayor Raymond questioned the over franchising of sandsculpting with his event and another in November, and asked how many events there would be in a year.

▪ **Bill Knight** responded that Fort Myers Beach could support 3 events a year, and there was enough time between events that there would be no overlapping.

**VOTE:** Motion approved 5 to 0

## **VI. PUBLIC COMMENT**

### **Public Comment Opened**

▪ **Warren Babcock** expressed concerns about reports of 10 lights on 12' poles at Mound House and , asked whether it was part of the landscape plan.

▪ **John Albion** addressed the need to light the island's crosswalks, suggesting Council set a time the issue could be discussed.

### **Public Comment Closed**

Town Manager Stewart responded to Mr. Babcock's concerns that there were lights in the landscape plan, however he will look into the matter and contact Mr. Babcock regarding his concerns once he had the information at hand.

Council Member Mandel addressed Mr. Albion's request on lighted crosswalks, thanked staff for their time in conducting the survey needed to install the crosswalk signs, and asked for a timeline for the signs to be installed.

Public Works Director Cathie Lewis anticipated continued data collection, permitting from the county and installation for the first week of March.

## **VII. LOCAL ACHIEVEMENTS AND RECOGNITIONS**

Council Member Babcock acknowledged Mr. Harry Gottlieb's award from Bay Management; -The Friends of the Mound House award for best organization on the beach.

Council Member List acknowledged Cynthia Shafer who heads up Beds for Kids, and her work within the community.

Councilmember Mandel referenced a report regarding the beaches' bed tax contributions to the community issued by the Coastal Advisory Committee.

## **VIII. ADVISORY COMMITTEES ITEMS AND REPORTS**

### **A. Appointment to the Marine Resources Task Force**

Mr. Stewart indicated there was a request before Council from Mr. Dennis Kovach for appointment to the Marine Resources Task Force.

**MOTION:** Council Member List moved to approve the appointment of Dennis Kovach to the Marine Resources Task Force; second by Council Member Babcock.

**VOTE:** Motion passed 5 to 0

## **IX. APPROVAL OF MINUTES**

### **A. January 18, 2011 Regular Council Meeting**

### **B. January 18, 2011 Work Session**

**MOTION:** Council Member List moved to approve; second by Vice Mayor Raymond.

**VOTE:** Motion passed 5 to 0.

## **X. PUBLIC HEARING**

### **A. Second Public Hearing, 11-01, Ordinance Amending Sign Ordinance**

Mayor Kiker opened the hearing at 7:12 p.m.

Town Clerk Michelle Mayher read the ordinance title.

### **TOWN OF FORT MYERS BEACH ORDINANCE NO. 11-01**

**AN ORDINANCE AMENDING CHAPTER 30-SIGNS IN THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; AMENDING DEFINITIONS; APPLICABILITY; PROHIBITED SIGNS; EXEMPT SIGNS; POWERS AND DUTIES OF TOWN MANAGER; PERMITS AND INSPECTIONS; NON-CONFORMING SIGNS; DESIGNATION OF HISTORICALLY SIGNIFICANT SIGNS; COMPUTATION OF SIGN AREA; LOCATION; TEMPORARY SIGNS; MAXIMUM SIGN AREA; AND STANDARDS FOR CERTAIN TYPES OF SIGNS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

Town Manager Stewart provided a review of past issues with the sign ordinance, including issues of constitutionality and enforcement.

Community Development Director Walter Fluegel provided some examples of the 'cleanups' on the ordinance; Town Attorney Marilyn Miller reviewed her latest changes and indicated she would include in the ordinance language to deny certificates of occupancy or use in the event of noncompliance.

#### **Public Comment Opened**

- **Cheryl Martin**, Beach Shell Inn addressed Council regarding the December 31, 2011 deadline for sign compliance and opined that an economic analysis was necessary.

- **Richard McDole** Bonita Springs Building Consultant, Outrigger Beach Resort provided his observations, that the reasons for controlling the signs by the town was to limit and control distraction. Mr. McDole felt the ordinance should stand on its own merits and noted the entire ordinance needed a total review.

- **John Albion** President FMB Chamber of Commerce agreed with the previous two speakers and felt the timing was bad due to the economy. Mr. Albion offered the assistance of the Chamber to continue more discussion of the ordinance.

- **Chris Loffreno** felt the new sign ordinance was unfair for the commercial businesses on the island, especially the small businesses and requested a revision in the ordinance that would allow businesses to keep their signs if it was a part of their original development order.

- **Lee Melsek** felt it was time to accept and enforce the sign ordinance, which was developed to provide a community standard. Businesses were given 8 years to comply and expressed his frustration that more time was now being given to come into compliance.

#### **Public Comment Closed**

In response to Council Member Babcock's question, Attorney Miller stated the current ordinance advised that all signs were to have been amortized by 2007, that 8 years is legally defensible, and that the town was now at 12 years. Mr. Stewart also stated that the businesses in the town had been on notice for 12 years which far exceeded any town's responsibility to make sure the economic impact could be absorbed by those affected. It is the judiciary responsibility of the seller of a business to let the new owner know about the sign ordinance.

Council Member Babcock addressed sandwich board signs, exceptions for parasail and water vehicle businesses, and upland property sandwich board signs for gulf front businesses. Discussion continued with the deletion of Sec. 30.7. Parking of advertising vehicles, then addressed in Sec. 30-2. Vehicle Signs. Council Member Babcock

continued to page 24, Sec. 30-57. Designation of Historically Significant Signs and consistency with Chapter 22, asked about the difference between historic signs and historic structures. Vice Mayor Raymond felt the need for any final decision to be placed with the voters. After listening to Vice Mayor Raymond's statement, Council Member Babcock indicated there needed to be a rewrite of Chapter 22 if that was the intent of the Council. Attorney Miller responded that would be separate from this ordinance. It was decided by Council to put the issue on an action list.

Council Member Babcock questioned the removal of 7 d. regarding open house signs for properties that do not front Estero Boulevard. Discussion ensued regarding constitutionality and content of a sign on public property followed by the need for enforcement of any issue addressed in the ordinance. Attorney Miller recommended the ordinance remain as is; however, Mr. Stewart asked whether it only pertained to Estero Boulevard or to any off site area. Attorney Miller responded it meant for any off site location, the open house sign was only to be placed on the property in question.

Council Member List felt the discussion illustrated the problems with the ordinance, feeling it was micro-managing the property rights of residents and businesses, and felt there was no clear consensus on the ordinance. Mayor Kiker stated that a previous Council had already had the entire discussion accompanied by presentations by businesses over 3 years ago and voiced his frustration over the process.

Council Member Babcock did not want this one issue to hold up the entire sign ordinance; . Town Manager Stewart suggested Council leave the wording for off site directional signs in the ordinance and then deal with any issues that may arise.

Mayor Kiker questioned page 19, #11 regarding Licensed Sign Contractors vs. Licensed Contractors as well as the need for an effective date.

Council Member Mandel asked Attorney Miller if there was any wording that could assist with the issue of the off -site directional signs for open houses. Attorney Miller stated she would look into it.

Council Member Babcock requested that Licensed Sign Contractor be replaced with Licensed Contractor.

**MOTION:** Councilmember Babcock made a motion to move forward with Ordinance 11-01 as written with the exception of page 19 #11 the wording of Licensed Sign Contractor be removed.

**FAILED:** Motion failed for lack of second.

**MOTION:** Vice Mayor Raymond made a motion to move forward with Ordinance 11-01, however to replace Licensed Sign Contractor to Licensed Contractor and to remove the strikes from page 31 regarding directional open house signs. Second by Mayor Kiker.

After further discussion, Mayor Kiker removed his second to Vice Mayor Raymond's motion; Vice Mayor Raymond removing his motion.

**MOTION:** Council Member Mandel moved to continue the hearing of Ordinance 11-01 to the April 18<sup>th</sup> meeting at 6:30 p.m Second by Vice Mayor Raymond.

**VOTE:** Roll call vote conducted by Town Clerk Michelle Mayher passed unanimously, 5 to 0.

Mayor Kiker closed the hearing at 8:58 p.m.

***Recess: 8:58 PM      Reconvene: 9:12 PM.***

## **XI. ADMINISTRATIVE AGENDA**

### **B. Mandatory Recycling for Businesses**

Town Manager Stewart indicated it was an opportunity for Council to officially give staff direction to work on a mandatory recycling ordinance.

**Public Comment Opened**

**No Public Comment**

**Public Comment Closed**

**MOTION:** Council Member Mandel made a motion to direct staff to move forward with the preparation of the Non-Residential Mandatory Recycling Ordinance; second by Council Member List.

**VOTE:** Motion passed 5 to 0

## **PUBLIC COMMENT**

**Public Comment Opened**

▪ **Sam Lurie** addressed Council regarding the library and his opposition to the library expansion, reviewed his efforts to stop the expansion, and asked for a referendum.

**Public Comment Closed**

## **XII. TOWN MANAGER'S ITEMS**

### **A. Council Office Hours at Newton**

Town Manager Stewart would like to come up with a scheduling format for Council members to use the office space at Newton Park. Vice Mayor Raymond would like one day a week to be scheduled for each Council member to be present for possibly 3 hours in order to be available for islanders.

Councilmember List suggested that on a certain day each month the Council could select a date convenient for them. It was decided to hold the decision until the new Council was seated.

Councilmember List asked to have the issue of the Bay Oaks Foundation donation placed on a future agenda.

### **XIII. TOWN ATTORNEY'S ITEMS**

Attorney Miller requested Council to waive the conflict of legal representation in the Tezak litigation.

**MOTION:** Council Member Babcock made a motion to waive the matter with Roetzel & Andress Law Firm in the Tezak matter; second by Vice Mayor Raymond.

**VOTE:** Motion passed 4 to 1 with Council Member Mandel dissenting.

Attorney Miller provided Council with an email regarding the Island Arts Foundation and whether the town had the right to examine the books and accounting records. The Town Clerk had evidence that the town had been a member in the years 2009 and 2010 and paid dues, however no request for membership fee for 2011 had been received.

Council Member Babcock felt the town should do an audit, as this matter was similar to the issue with the library, with residents asking questions and wanting answers. He had been asked about the co-mingling of funds between the Island Arts Foundation and the Purple Heart Theatre, the possibility of the property being sold and any necessary restitution to the Island Arts Foundation. Council Member Babcock also stated there were many people on the island that were supportive of the IAF however until concerns with the Purple Heart Theatre were addressed those people were leery of making donations to the IAF.

Discussion continued as to the process or methodology for conducting such audits. There was consensus from Council to direct staff to develop a methodology for addressing this issue.

### **XV. AGENDA MANAGEMENT**

- Mound House – processes for approving money donated
- Bay Oaks – Fee Schedules

### **XVI. RECAP OF ACTION ITEMS**

- Obtain information on Mound House lighting for Warren Babcock
- Notify new member of MRTF of his appointment
- Continued hearing on Ordinance 11-01 to April 18<sup>th</sup>, 2011
- Work on non-residential mandatory recycling ordinance
- Develop use of Newton Park offices
- Attorney to notify Roetzel & Andress on waiver
- Attorney to provide sign ordinance information in April
- List of organizations the town had donated funds to
- Methodology of handling donations and/or audits

#### **XIV. COUNCILMEMBERS ITEMS AND REPORTS**

Council Member List questioned whether the March 7<sup>th</sup> Council meeting had actually been canceled. Town Manager Stewart responded that there was nothing timely that needed to be addressed; it was the consensus of Council to cancel.

#### **XIII. ADJOURNMENT**

**MOTION:** Council Member Babcock made a motion to adjourn the meeting with a second by Councilmember List.

*Meeting adjourned at 10:12 PM*

Adopted \_\_\_\_\_ With/Without changes. Motion by \_\_\_\_\_

Vote: \_\_\_\_\_

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

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